

**MINUTES
of the
FOURTH MEETING
of the
CAPITAL OUTLAY SUBCOMMITTEE
of the
NEW MEXICO LEGISLATIVE COUNCIL
and the
LEGISLATIVE FINANCE COMMITTEE**

**November 6, 2007
Room 307, State Capitol
Santa Fe**

The fourth meeting of the Capital Outlay Subcommittee of the New Mexico Legislative Council and the Legislative Finance Committee for 2007 was called to order at 10:25 a.m. by Speaker of the House of Representatives Ben Lujan, co-chair, in Room 307 of the State Capitol in Santa Fe.

Present

Rep. Ben Lujan, Co-Chair
Sen. Ben D. Altamirano, Co-Chair
Sen. Carlos R. Cisneros
Sen. Kent L. Cravens
Rep. Brian K. Moore
Rep. Henry Kiki Saavedra
Sen. Michael S. Sanchez
Rep. Edward C. Sandoval
Sen. John Arthur Smith
Rep. Thomas C. Taylor
Rep. Jeannette O. Wallace
Rep. Teresa A. Zanetti

Absent

Sen. Dianna J. Duran
Sen. Carroll H. Leavell
Rep. W. Ken Martinez
Sen. Leonard Lee Rawson

Advisory Members

Rep. Janice E. Arnold-Jones
Sen. Timothy Z. Jennings
Sen. H. Diane Snyder

Sen. Stuart Ingle

Guest Legislator

Rep. Roberto "Bobby" J. Gonzales

Staff

David Abbey, Director, Legislative Finance Committee (LFC)
Ric Gaudet, Legislative Council Service (LCS)
Renée Gregorio, Capital Outlay, LCS
Linda Kehoe, Capital Outlay Coordinator, LFC

Jeannae Leger, LFC
Paula Tackett, Director, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of handouts given by meeting presenters are in the meeting file.

Tuesday, November 6

The minutes from the September 20-21 and October 16 meetings of the Capital Outlay Subcommittee were approved.

Recommendations for Funding Acequia Projects

Paula Garcia of the New Mexico Acequia Association (NMAA) and Craig Roepke from the Interstate Stream Commission gave a presentation to the subcommittee about funding acequia construction projects. They reviewed the work of the Acequia Construction Program Task Force, which met several times to make recommendations on streamlining the acequia construction process. The main recommendations of the task force are to:

- implement staged construction projects. Acequias should complete planning and design prior to seeking funding for construction;
- dedicate more resources to design and construction. Options for funding include dedicating a portion of the New Mexico Irrigation Works Construction Fund for acequia projects or creating an acequia project fund;
- provide technical assistance. The legislature should fund state agencies to provide for planning and design services for acequias; and
- continue the work of the task force in 2008.

Mr. Roepke said that it is critical that acequia capital projects be staged. Acequias need to get planning and design funding before they ask for construction money. Otherwise, a large amount of money that could otherwise be spent on ready projects gets held up, often for several years. Ms. Garcia said that most problems occur when an acequia goes to the legislature for funding of its project before getting technical assistance from the Interstate Stream Commission.

Senator Altamirano asked about the funding that the NMAA has received from the state. Ms. Garcia said that the NMAA has received contractual funding through the Department of Finance and Administration (DFA) to provide technical assistance to acequias. She said that the NMAA has provided about 50 Infrastructure Capital Improvement Plans (ICIPs) for acequias.

Representative Saavedra asked why the NMAA encouraged the formation of some acequias inside the boundaries of the Middle Rio Grande Conservancy District. Ms. Garcia said that those acequias are unique, and have been recognized as acequias prior to the foundation of the district. She said that the conservancy district has only been providing water to certain points of the existing acequia systems. Those acequias decided to reorganize out of necessity, since their water users were not getting water or having their ditches maintained.

Senator Smith asked if there are any acequias that have qualified for funding from the executive's Water Innovation Fund. Ms. Garcia said she is not aware of any acequias that have received any assistance from the fund.

Senator Smith said that he is concerned that acequias, which get a large part of their construction programs funded by the federal government, would use state capital outlay funding as their required cost-share for projects, rather than assessing their own parciantes. He asked the presenters for a list of acequias that have received capital outlay funding from the state, and whether those acequias assess their parciantes to fund projects. Ms. Garcia said that the NMAA encourages its member acequias to assess parciantes, but they are not required by law to do so.

Capital Outlay Request Form and Recommendations for Reauthorization Process

Capital Outlay Request Form

Ms. Gregorio reviewed for the subcommittee the capital outlay request form that the LCS uses, and the changes that were made to the form in 2006.

Representative Arnold-Jones said that nonprofit organizations need to include proof of their nonprofit status with a capital outlay request.

Senator Jennings said that requiring local governments to sign an agreement to own and operate a facility before receiving funding can be problematic, because sometimes the desires of the local government conflict with the desires of the area's legislators. If the legislature wants to fund a project, even though that project is not on the local government's ICIP, it should be allowed to do so.

Representative Saavedra asked whether the governor is required to fill out capital outlay request forms for his projects, like everyone else. Robert Apodaca, director of the Local Government Division of the DFA, said that executive projects go through a review process, using criteria similar to that found on the LCS form.

Representative Zanetti said it would be helpful if the LCS could publish during the session a chart that shows who is planning on funding each project, and for what amount. That way, it would be easier to fund projects fully and make cooperative funding decisions.

Senator Snyder suggested modifying the form so that requesting entities can provide dollar amounts for each part of a project, such as planning, land acquisition, design, construction

and equipping. If a project could not be fully funded, at least the legislature could fund a complete part of the project.

Representative Sandoval said that for 2008, the legislature should consider not funding any nonprofit entity, and try to develop a better system for nonprofit requests.

Senator Cravens asked for a complete status list of capital outlay projects in his district. Ms. Kehoe said that the LFC provides quarterly status reports for the high-cost projects, but to do a report for the 9,000 current projects would take several staff members months to accomplish. Senator Cravens said that the legislature does not need restrictions on how to spend money on projects, but legislators need staff, so they can make better-informed decisions.

Recommendations for Reauthorization Process

Ms. Gregorio described the proposed changes to the capital outlay reauthorization process that had been discussed at length in the October meeting. She said that staff worked with representatives of the Ramah Chapter of the Navajo Nation in order to remedy their concerns.

Representative Saavedra suggested changing the exception language to refer to tribal governments, rather than the more general language of "intergovernmental delays". Mr. Apodaca agreed, saying that the language as written was too permissive, and that reauthorizations would continue to be abused.

Senator Jennings said that the changes to the reauthorization process would make big changes to the process, and legislators would need time to learn all the new rules. He also thinks that it would not be a good idea to require legislators to get executive agency approval to proceed with a reauthorization.

Senator Smith said that regardless of the restrictions on reauthorizations the legislature imposes upon itself, he will enforce those guidelines on all the local governments in his district. He asked Mr. Apodaca what assurance the legislature will get that the executive is implementing sound planning guidelines in choosing its projects in order to stop the need for so many reauthorized projects. Mr. Apodaca said that for years the executive has been trying to get most of the proposed reauthorization reforms adopted for years. Senator Smith said that the legislature should not enact executive projects unless the executive agrees to follow the same rules as the legislature.

Senator Altamirano said that the reauthorization process needs to be changed before the upcoming session, although it may be prudent to have some of the reforms take effect the following year.

Representative Gonzales said that the \$50,000 floor for reauthorizations will unfairly benefit smaller projects. Further, entities that have a need for a small amount of money for a project will merely ask for \$50,000 in order to skirt the restriction.

Senator Snyder said that rather than placing restrictions on the flood of reauthorizations, the legislature should focus on the causes of that problem: not fully funding projects in the first place and funding improperly planned projects.

Senator Sanchez said that he will suggest in the senate caucus a one-year moratorium on funding local projects.

Bennie Coho, director of the Ramah Navajo School Board, said that if the reauthorization limit is lowered to \$15,000 from the proposed \$50,000, his agency would have no problems with the changes to the process.

Michael Hawkes, executive director of the Alamo Navajo School Board, said that it is very difficult to get contractors to bid on projects in Alamo. He said that Alamo projects need to be reauthorized, not just because the Navajo Nation presents bureaucratic obstacles, but also because projects in remote areas often take much longer to complete. He said that the school board can complete all of its projects with a two-year extension.

Pilar Faulkner, representing the Ramah Navajo School Board, said that the people in Ramah will suffer if appropriations revert. Reauthorizations have been crucial to keeping the funding alive, she said.

LCS staff was directed to contact the president and tribal council of the Navajo Nation in an attempt to get the stalled projects moving.

Subcommittee Discussion of Statewide Capital Projects

The subcommittee went into executive session to discuss funding of potential statewide capital outlay projects.

After the discussion, the subcommittee adjourned at 4:30 p.m.